

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1683 of 2000

with

C.A. No.7519 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO. LTD.

Versus

MUMTAZBEN HASAM LANGHA

Appearance:

MR SANDIP C SHAH for Petitioner

MR MEHUL S SHAH for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE K.M.MEHTA

Date of decision: 25/09/2000

ORAL JUDGEMENT(Per: K. M. Mehta, J.)

Upon joint request the matter is taken up for final hearing.

2. The New India Assurance Co. Ltd., Appellant, Original Opponents Nos.3 and 6 have filed the present Appeal against the judgement and award dated 3-5-2000 passed by Motor Accident Claims Tribunal, Kachchh at Bhuj under Section 163(A) of the Motor Vehicles Act, 1988 (herein after referred as "the Act"). The Tribunal by its award and judgement has directed that Smt. Mumtazben Hasam Langha and others, original Applicants and Respondents Nos.1, 2, 3, and 4 herein are entitled to a sum of Rs.4,17,500/(Rupees four lacs seventeen thousand five hundred only) from the original opponents No.2 (owner), No.3 (New India Assurance Co. Ltd.), No.5 (owner) and No.6 (New India Assurance Co. Ltd.), jointly and severally with running interest at the rate of 12% per annum from the date of the application till deposit. The impugned order is recorded for temporary compensation in exercise of power under Section 163A of the new Act during the pendency of the MACP No.987 of 1998. by the Motor Accident Claims Tribunal (Main) Kachchh at Bhuj.

2.1 Since the impugned order tantamounts to only interim compensation during the pendency of the main claim petition, which is required to be adjudicated upon after a full-fledged enquiry and after recording evidence, the order under challenge is subject to adjustment as per the final judgement and award that may be recorded in the pending main claim petition. We are, therefore, not inclined to interfere with the impugned order. However, it would be expedient to make necessary observation and direction so that the original main claim petition is in any way not intercepted 'en route' leaving the impugned order as final. Learned Advocate, Mr.Mehul S. Shah for the respondents has, rightly, assured that the original claimants shall not withdraw the pending main claim petition. The claimants shall file an undertaking before the Trial Court within four weeks from today stating that they shall pursue the main claim petition to its legal and logical end and they shall obtain a decision and award on merits and they shall not permit the impugned claim petition to be dismissed for default or withdrawn.

2.2 Pursuant to the interim direction, the appellant original opponent-Insurance Company has deposited a portion of the amount of the interim compensation as per the interim compensation order. The appellant-original opponents Nos.3 and 6 in the main claim petition is

directed to deposit the remaining amount due and payable under the impugned order below Exh.6 under Section 163A of the Motor Vehicles Act within a period of two months from today before the Tribunal concerned. The amount of Rs.25,000/- deposited before this Court under Section 173 of the Motor Vehicles Act is ordered to be transmitted to the Tribunal concerned by the Registry.

2.3 It will be open for the Tribunal to appropriately make apportion of the amount of interim award amongst the claimants in light of the celebrated principles of law. The Tribunal is directed to pay 20% of the total deposit before the Tribunal by way of an account payee cheque to the respondent Nos. 1 and 4. Respondents No.s2 and 3 are minors and they are represented by the Gurdian, respondent No.1. The remaining amount like that 80% of the total amount that may be deposited or that may further be deposited shall be invested in a nationalised bank for a long period initially, for a period of five years and the amount of interest which shall due therefrom periodically, shall be payable to the respective claimants. In the event of expiry of the tenure of FDRs before the date of disposal of the main petition, the Tribunal shall extend the period of deposit till the main claim petition is heard. After the main petition is heard on merits, the amount of award shall be subject to this order, the amount under the interim order and also it will be subject to the proper directions in light of the celebrated principles of law so as to see that the amount of compensation is not being frittered away, the main object of compensation is preserved and protected.

2.4 In view of the aforesaid observations and directions, the appeal shall stand disposed of without entering into the merits thereof.

2.5 In view of the order passed in the main matter, no orders are passed in the Civil Application.

(J. N. Bhatt, J.)

(K. M. Mehta, J.)

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